

that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing :

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

258. (1) If in any case under this Chapter in which a charge has been framed **Acquittal.** the Magistrate finds the accused not guilty, he shall record an order of acquittal.

1[(2) Where in any case under this Chapter the Magistrate does not proceed **Conviction.** in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.]

259. When the proceedings have been instituted upon complaint, and upon **Absence of** any day fixed for the hearing of the case the complainant is absent, and the offence **complainant.** may be lawfully compounded, 2[or is not a cognizable offence,] the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

CHAPTER XXII.

OF SUMMARY TRIALS.

260. (1) Notwithstanding ^{Power to try} anything contained in this ^{summarily.} Code,—

(a) the District Magistrate,

(b) any Magistrate of the first class specially empowered in this behalf by the State Government, and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class

260. (1) Notwithstanding ^{Power to try} anything contained in this ^{summarily.} Code—

3* * *

(b) any Magistrate of the first class specially empowered in this behalf by the 4[5[State] Government] 6[in consultation with the High Court,] and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class

¹ Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 73, for original sub-sec. (2).

² Inserted by s. 74, *ibid.*

³ The clause "(a) the District Magistrate," was deleted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

⁴ Substituted by the A. O. 1937 for "L. G."

⁵ Substituted by the A. O. 1950 for "Provincial".

⁶ Inserted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

and specially empowered in this behalf by the State Government,

may, if he or they think fit, try in a summary way all or any of the following offences :—

(a) offences not “punishable with death, [imprisonment for life] or imprisonment for a term exceeding six months ;

(b) offences relating to weights and measures under sections 264, 265 and 266 of the Indian Penal Code ;

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(c) hurt, under section 323 of the same Code ;

(d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed [two hundred rupees] ;

(e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed [two hundred rupees] ;

(f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed [two hundred rupees] ;

(g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed [two hundred rupees] ;

(h) mischief, under section 427 of the same Code ;

(i) house-trespass, under section 448, and offences under sections 451, 453, 454, 456 and 457 of the same Code ;

and specially empowered in this behalf by the ¹[State] Government], ³[in consultation with the High Court],

may, if he or they think fit, try in a summary way all or any of the following offences :—

(a) offences not punishable with death, ⁴[imprisonment for life] or imprisonment for a term exceeding six months ;

(b) offences relating to weights and measures under sections 264, 265 and 266 of the Indian Penal Code ;

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(c) hurt, under section 323 of the same Code ;

(d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed ⁵[two hundred rupees] ;

(e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed ⁵[two hundred rupees] ;

(f) receiving or retaining stolen property under section 411 of the same code, where the value of such property does not exceed ⁵[two hundred rupees] ;

(g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed ⁵[two hundred rupees] ;

(h) mischief, under section 427 of the same Code ;

(i) house-trespass, under section 448, and offences under sections 451, ⁶[453, 454], 45 and 457 of the same Code

¹ Substituted by the A. O. 1937 for “L. G.”.

² Substituted by the A. O. 1950 for “Provincial”.

³ Inserted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

⁴ Substituted by Act 26 of 1955, s. 36 (a), for “transportation”.

⁵ Substituted, *ibid.*, s. 36 (b), for “fifty rupees”.

⁶ Inserted by the Amending Act, 1903 (I of 1903), s. 3 and Sch. II, Pt. II.

(j) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506 of the same Code ;

(k) abetment of any of the foregoing offences ;

(l) an attempt to commit any of the foregoing offences, when such attempt is an offence ;

(m) offences under section 20 of the Cattle-trespass Act, 1871 :

I of
1871.

Provided that no case in which a Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to rehear the case in manner provided by this Code.

261. The State Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences :—

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(a) offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, 447 and 504 ;

(b) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine ;

(c) abetment of any of the foregoing offences ;

(j) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506 of the same Code ;

(k) abetment of any of the foregoing offences ;

(l) an attempt to commit any of the foregoing offences, when such attempt is an offence ;

(m) offences under section 20 of the Cattle-trespass Act, 1871 :

I of
1871.

Provided that no case in which a Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

261. The ¹[State] Government may ²[in consultation with the High Court] confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences :—

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of
1860.

(a) offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, ⁴[447 and 504] ;

(b) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month ⁵[with or without fine] ;

(c) abetment of any of the foregoing offences ;

¹ Substituted by the A. O. 1937 for "L. G.".

² Substituted by the A. O. 1950 for "Provincial".

³ Inserted by 23 of 1951, s. 2 and Sch. Pt. I.

⁴ Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 75, for "and 447".

⁵ Inserted by s. 75, *ibid.*

(d) an attempt to commit any of the foregoing offences, when such attempt is an offence.

(d) an attempt to commit any of the foregoing offences, when such attempt is an offence.

Procedure for summons and warrant cases applicable.

262. (1) In trials under this Chapter, the procedure prescribed for summons-cases shall be followed in summons-cases and the procedure prescribed for warrant cases shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

Record in cases where there is no appeal.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the ¹[²State] Government] may direct the following particulars:—

- (a) the serial number;
- (b) the date of the commission of the offence;
- (c) the date of the report or complaint;
- (d) the name of the complainant (if any);
- (e) the name, parentage and residence of the accused;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e), clause (f) or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed;
- (g) the plea of the accused and his examination (if any);
- (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;
- (i) the sentence or other final order; and
- (j) the date on which the proceedings terminated.

Record in appealable cases.

³264. (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in section 263 and shall, before passing any sentence, record a judgment in the case.]

(2) Such judgment shall be the only record in cases coming within this section.

Language of record and judgment.

265. (1) Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorized to employ clerk.

(2) The State Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court, to which such Bench is immediately subordinate, and the record or

Bench may be authorized to employ clerk. (2) The ¹[²State] Government] may ⁴[in consultation with the High Court] authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is

¹ Substituted by the A. O. 1937 for "L. G."

² Substituted by the A. O. 1950 for "Provincial".

³ Substituted by Act 26 of 1955, s. 37, for the original.

⁴ Inserted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A.—Preliminary.

266. In this Chapter, except in sections 276 and 307, and in Chapter XVIII, "High Court" ¹[means ²the High Court ³[for a Part A State or a Part B State]], and includes such other Courts as the ⁴[State] Government may by notification in the Official Gazette, declare to be High Courts for the purposes of this Chapter ⁵[and of Chapter XVIII].

267. All trials under this Chapter before a High Court shall be by jury,

267. All trials under this Chapter before a High Court ⁶[or the Court of Session for Greater Bombay] shall be by jury, and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent ⁷[or ⁸law by which the High Court is constituted or continued] the trial may, if the High Court so directs, be by jury.

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent or law by which the High Court is constituted or continued the trial may, if the High Court so directs, be by jury.

268. All trials before a Court of Session shall be either by jury or by the Judge himself.

⁹268. All trials before a Court of Session shall be either by jury or by the Judge himself.]

269. (1) The State Government may by order in the Official Gazette, direct that the trial of all offences, or of any particular class of offences, before any

269. (1) The ¹⁰[State] Government] may ¹¹[in consultation with the High Court] ¹²* * * by order in the Official Gazette, direct that the

¹ Substituted by the A. O. 1937 for "means a High Court of Judicature established under the Indian High Courts Act, 1861, or the Government of India Act, 1915, and includes the Chief Court of Oudh, the Court of the Judicial Commissioner of Sind, and such other Courts as the G. G. in C. may, by notification in the Gazette of India".

² Substituted by the A. O. 1950 for "a High Court within the meaning of the Government of India Act, 1935".

³ Substituted by Act 1 of 1951, s. 12, for "for a Part A State".

⁴ Substituted by the A. O. 1950 for "Provincial".

⁵ Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 76.

⁶ Inserted by Bom. 32 of 1948, s. 4.

⁷ Substituted by the A. O. 1950 for "of any High Court established under the Indian High Courts Act, 1861, or the Government of India Act, 1915, or the Government of India Act, 1935".

⁸ Substituted by Act 1 of 1951, s. 13, for "order".

⁹ Substituted by Act 26 of 1955, s. 38, for the original.

¹⁰ Substituted by the A. O. 1937 for "L. G.".

¹¹ Inserted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

¹² The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.